IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10077 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHATT JAYSHRIBEN SHANTILAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10077 of 2003

MR PF ADHVARYU for Petitioner No. 1

MR.MUKESH PATEL, LD AGP for Respondent No. 1,3

MR MANOJ N POPAT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/02/2004

ORAL JUDGEMENT

It is rather unfortunate that the petitioner who had

rendered 30 years' service as Mukhya Sevika has been driven out from service unceremoniously solely on the ground that the Gujarat State Social Welfare Advisory Board [for short " Board "] has now issued direction to the effect that funds should be drawn from Part II to meet with the expenses during 2003-2004, after obtaining prior permission of the Board. The impugned order shows that the petitioner is relieved from the services with effect from 31.3.2003 on this sole ground.

2. The petitioner was appointed on 24.12.1974, as Mukhya Sevika in the project of Child Demonstration at Padra. The order of appointment which has been annexed to this petition at Annexure "B" shows that the appointment was purely on temporary basis and her services were liable to be terminated by giving 24 hours notice. It also shows that the expenditure towards the salary of the petitioner Rs.250/- were to be drawn from part II. The petitioner had worked on this post till 31.3.2003 i.e. almost for 29 years. All of a sudden, her service was terminated for such reason.

3. Mr.P.F.Adhvaryu, learned advocate for the petitioner submitted that the petitioner has been working since 24.12.1974 as Mukhya Sevika, cannot be relieved from service by handing over to her a simple written intimation. He has further submitted that the post is a permanent post and the project is also permanent and, therefore, the petitioner can be deemed to have been confirmed on the said post and before terminating her services, the respondents ought to have followed the necessary procedure. Lastly he has submitted that the petition deserves to be allowed and the reliefs prayed in the petition, deserve to be granted.

4. As against that, Mr.Mukesh Patel learned Assistant Government Pleader appearing for the respondent No.1- State has submitted that since it was a temporary/adhoc appointment, the respondents were at liberty to terminate it by giving 24 hours notice. He has further submitted that this being ad hoc appointment, no procedure was required to be followed. He has further submitted that since according to the decision of the Board, whatever the expenditure which were required to be incurred for the year 2003-2004, prior approval from the Board was required and, therefore, there was no provision for giving the salary. In other words, her services were not regularized as she was appointed on temporary basis. No other submissions have been advanced by Mr.Patel.

4.1 No submissions have been advanced on behalf of respondent no.2.

5. This is a Child Demonstration Project which is going on for the last 30 years as claimed by the petitioner and as can be seen from the record of this petition also. The post is even existing today. There is, therefore, no difficulty or hesitation in holding that this project is of a permanent nature and the post is also a permanent one. In fact, it has been stated at the Bar by Mr.Adhvaryu, learned advocate appearing for the petitioner that after the termination of the services of the petitioner, attempt has been made to recruit new person in her place. This fact is also not disputed by respondent no.1. Thus, requirement of Mukhya Sevika in the project seems to be very much there. Considering all these factors, it is incumbent on the part of the respondents to continue the petitioner in the employment, despite the circular issued by the Board. It may be noted here that in the project there are other employees also on temporary basis, as can be seen from the manual of welfare project. When other persons could be paid salary, why not the petitioner. If the Board has issued such circular or direction, it is their internal matter i.e. between the Project Authorities and the Board. When the petitioner has, by virtue of 29 years' service acquired the status of a permanent employee on the said post, it was not material, where the salary came from.

Even the respondents could not have terminated her services on that ground. It is also required to be noted that admittedly no procedure was followed before terminating her service. As stated above, after rendering such a long service, the petitioner ought to have been made permanent by the respondents. But it is not so because even now their contention is that she was an ad hoc employee. Practise to continue the employee on temporary basis on permanent post for long time, is repeatedly deprecated by the Apex Court. The Apex Court has even held that the concerned employee with long duration of service even on temporary basis is to be treated as permanent and the employer is required to regularize the service of the concerned employee on such post, if the post is permanent post. The Hon'ble Apex Court has rendered such decision in the case of State of Haryana and others Vs. Piara Singh and others, reported in 1992 [4] SCC- page at 118. A person is qualified and if eligible to hold the post, a right to be regularized on that post has to be considered. In the case of Om Prakash Singh and others Vs. Union of India and others, reported in 1993 Suppl. [1] SCC page 526, the Hon'ble

Apex Court has said that even in the matter of pay temporary employee has to be treated on equal footing, and he is required to be paid the salary, that is made available to the permanent employees in that class. In the instant case, when she had rendered 29 years' service as Mukhya Sevika, and it does not lie in the mouth of the respondents that she had worked on ad hoc basis. She is deemed to have been confirmed on that post. In view of this, the respondents were required to follow the principles of natural justice before bringing an end to her service. The impugned order for that reason is bad in law and is required to be quashed and set aside. It may also be noted here that the letter of appointment dated 24.12.1974, nowhere stipulates any condition that the appointment was subject to the availability of funds from Part II. If the Board itself imposed certain restrictions with regard to the expenditure required to be incurred from Part II, either the respondents or the Board should have made the alternative arrangement to pay to the petitioner. Termination of the services was not the solution. For this reason also, the order is bad in law.

6. For the reasons stated above, the impugned order at Annexure " A" is required to be quashed and set aside and accordingly, it is ordered to be quashed and set aside. The respondents are directed to reinstate the petitioner on her original post with continuity of service with all the incidental benefits including full back wages.

7. At this juncture, Mr.Patel, learned Assistant Government Pleader submits that the petitioner, after the impugned order ceased to an employee of the respondents and, therefore, she has not worked on the said post till today and, therefore, she is not required to pay the salary on the principle of "no work no pay". He has further submitted that because of imposition of restriction by the Board on expenditure, it will be very difficult for the respondents to pay her back wages. It is pertinent to be noted here that the petitioner did not voluntarily, leave the job. She was always willing to work but because of the order terminating her services, she was prevented from rendering services to the respondents. There was ,therefore, no fault on the part of the petitioner and the principle of " no work no pay" will not apply in the facts of the present case. For the reasons stated in the judgment, it was for the respondents to make necessary arrangement for obtaining necessary funds and pay her salary. The second part of submission of Mr.Patel also cannot be accepted. His

request is, therefore, turned down. In the result, this petition is allowed. Rule is made absolute accordingly with no order as to costs.

[AKSHAY H.MEHTA, J]

Before the judgment could be signed, Mr.Manoj Popat, learned advocate appearing for respondent no.2 has

appeared today i.e. 17th February, 2004 and stated that when the matter was heard and the judgment was dictated, he was not present because he had left the Court as he was not feeling well. However, nobody had mentioned this fact when actual hearing commenced yesterday i.e. on 16th Feburary,2004 and the judgment was dictated in the open Court. In view of the same, I do not see any reason to recall the said judgment. He has further requested that the judgment be stayed for four weeks. However, considering the facts and circumstances, and in particular, the petitioner is without any means of living, no such stay can be given and hence, the request is rejected.

[AKSHAY H.MEHTA, J]

SNS